IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/02/2003

CORAM

THE HONOURABLE MR. JUSTICE E.PADMANABHAN

WRIT PETITION No.2781 of 2000

M/s. The Indian Hume Pipe Co.
Ltd., Silaiman, Madurai. ... Petitioner

-Vs-

1. The Presiding Officer,
Employees' Provident Fund
Appellate Tribunal, 7th Floor,
60, Skylark Building,
Nehru Place, New Delhi-110 019.

2. The Regional Provident Fund
Commissioner, Office of the
Regional Provident Fund,
Commissioner, Lady Doak College
Road, Chokkikulam, Madurai-625 002.

3. The Enforcement Officer,
Office of the Regional Provident
Fund Commissioner, Lady Doak
College Road, Chokkikulam,
Madurai-625 002. ... Respondents.

Petition under Article 226 of The Constitution of India to issue a
Writ of Certiorari as stated therein.

For petitioner : Mr. P.Ramaswamy for
M/s. V.Mani

For respondents: Mr.V.Vibhishanan, for RR.2 and 3
No appearance for RR.1

:O R D E R

The writ petitioner, M/s. Indian Hume Pipe Company, has prayed for the issue of a Writ of Certiorari, to call for the proceedings of the first respondent viz. Employee's Provident Fund Appellate Tribunal in Case No.ATA/13 (14)/99 dated 26.11.1999 and quash the same, including the proceedings of the second respondent.

2. Heard Mr.P.Ramaswamy, learned counsel appearing for Mr.V.Mani, for the petitioner and Mr.V.Vibhishanan, learned counsel appearing for respondents 2 and 3. With the consent of either side, the writ petition itself is taken up for final disposal.

3. The petitioner company was established during the year 1926 and is engaged in the manufacture of reinforced Cement Concrete Pipes, Poles, etc. throughout India. The products manufactured by the petitioner company being heavy in weight, instead of transporting them, the petitioner has established several factories all over the country. The service condition in each of the establishment or factory is different. For each of the factory, separate factory licence has been secured and they are covered by separate E.S.I. Code numbers. It is clear that each factory is a separate and independent unit by itself.

4. The petitioner received an order from the Tamil Nadu Water Supply and Drainage Board for supply of pre-stressed concrete pipes as well as laying pipes from Vaigai Dam to Anaipatti in Madurai, to a distance of 30 kilometres. The petitioner executed the contract from December, 1993 and the work was completed in January, 1995. The laying of pipe lines was entrusted to different contractors. The petitioner was served with a show cause notice and was called upon to furnish particulars. The petitioner contended that Employee's Provident Fund and Miscellaneous Provisions Act and E.S.I. Act have no application to the factory at Madurai or to the execution of the work of laying pipe lines. Laying work is not covered under Section 1(3)(b) of the Employee's Provident Fund and Miscellaneous Provisions Act. The petitioner, while stating that the work to the tune of Rs.5,11,41,709/- was executed through independent contractors, no contribution is payable in that respect. Whileso, the second respondent held that the petitioner is liable to contribute towards Provident Fund Contribution and insurance coverage charges to the tune of Rs.5,54,811.10. Being aggrieved, the petitioner preferred an appeal before the first respondent and raised very many contentions. The first respondent also confirmed the findings and proceedings of the second respondent in all respects and hence, the present writ petition.

5. The learned counsel for the petitioner sought to raise very many factual disputes in this writ petition, which is not permissible in a proceeding under Article 226 of The Constitution.

6. On behalf of respondents 2 and 3, a detailed counter has been filed. According to the respondents, the petitioner M/s. Indian Hume Pipe Company Limited is an establishment, covered under the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 and the Scheme framed thereunder. While applying the provisions of the Act, the petitioner denied the provident fund benefit to the employees engaged through the contractors, though the petitioner is liable for the same in terms of Section 8A, 6 and 2(f) of the Act and para 30 of the Scheme. The second respondent quantified the various contributions payable by the petitioner under Section 7-A of the Act, after following the procedures prescribed and after detailed considerations of all the objections and materials placed before him, by proceedings dated 25.02.19 99.

7. Being aggrieved, the petitioner preferred appeal and the same also came to be dismissed on 26.11.1999. The appellate authority on facts rendered definite findings and confirmed the proceedings of the original authority. Admittedly, the petitioner is an establishment and is manufacturing Hume Pipes with the help of cement and its predominant activities being "a cement industry" as specified in Schedule I. Manufacturing process of Hume Pipes cannot be carried on without the basic material 'Cement'. Section 1(3) covers establishments falling under the Schedule-heading 'Cement Industry' and it is very much applicable to the petitioner's establishment, which is manufacturing pipes with the help of cement. The work of laying cement pipe being undertaken by the petitioner. Hence, for such workers engaged in the said work either directly or through contractors, the petitioner is primarily liable to extend the provident fund benefits. The petitioner, being the principal employer, is solely liable to pay the benefits under the Act for the employees employed through the contractors in terms of Sections 8-A, 6 and 2(f) of the Act read with the Scheme.
8. The petitioner has failed to produce the records and account books, and hence, left with no other alternative, the second respondent, relying on the records produced by the contractors, called upon the petitioner to remit/ contribute the fund claimed. The petitioner also produced documents to establish that there were contractors doing the work for the petitioner and the petitioner company has to pay for such contractors. Therefore the contribution if any, has to be paid by the petitioner, the principal employer. The interpretation placed by the petitioner on Section 30(3) and Section 2(f) of the Act r/w 8(a)(2) is a misconception and the petitioner's co ntention cannot be sustained. It is the duty of the principal employer under Para 30 of the Scheme, to remit provident fund and other dues in respect of the employees employed by or through contractors and thereafter, to collect or recover the amount from the contractor under Section 8-A of the Act.

9. Dues have been assessed only on the Basic Pay and Dearness

Allowance, restricting wage ceiling of Rs.3,500/- and those who are drawing more than Rs.3,500/- have been excluded. The second respondent affording necessary opportunity, conducted an enquiry and thereafter, passed the impugned proceeding, which was challenged before the first respondent. It is contended that there is no illegality or error apparent on the face of record, warranting interference with the proceeding of the second respondent, as affirmed by the first respondent. It is contended that this Court will not be justified in re-examining the factual disputes of the matter, in the light of the concurrent findings by the two authorities below and no interference is called for, with respect to the proceedings of the first respondent. Various contentions advanced by the petitioner will not constitute a valid ground to interfere with the orders or proceedings of respondents 1 and 2 in exercise of powers of judicial review.

10. The learned counsel appearing for the petitioner filed voluminous documents in support of his contentions. The learned counsel appearing for the respondents No.2 and 3 also made his submissions in detail and contended that no interference is called for. Though the learned counsel for the petitioner sought to raise number of factual disputes, this Court, in the light of the concurrent findings of the two authorities below and while such findings are supported by reasons or material evidence besides being balance, will not be justified in interfering with the orders impugned in the present writ petition.

11. A perusal of the order passed by the second respondent, as affirmed by the first respondent, it is clear that the order in no way suffers with illegality or error apparent on the face of the record, nor the authorities have exceeded the jurisdiction vested in them. The proceedings impugned have been passed by the second respondent and confirmed by the first respondent, strictly in accordance with the statutory provisions of the Act and Rules as well as the Scheme. Though the learned counsel appearing for the petitioner spent hours together in taking the Court through the material and typed set of papers, this Court is of the considered view that it is not for this Court to re-appreciate the materials, as the second respondent and the first respondent have already analysed the entire evidence, both documentary and oral and have come to the right conclusion. Further the learned counsel is unable to point out any perversity in the appreciation of material evidence or misdirection in the proceedings of both the authorities.

12. Sitting under Article 226 of The Constitution of India, this Court, in the absence of any error of jurisdiction or error apparent on the face of the record or misconception of law or misdirection as to the statutory provisions, will not be justified in interfering with the proceedings impugned. Though this court permitted the learned counsel appearing for the petitioner to argue the matter elaborately and the learned counsel also took the Court through the typed set of papers, this Court finds that no case has been made out for interference under Article 226 of The Constitution of India. This Court finds that there is no violation of principles of natural justice in the proceedings of the second respondent, as affirmed by the first respondent. This Court also finds that there is neither an error apparent on

the face of the record nor there is an error of jurisdiction nor there is any illegality or infirmity in the proceedings of the second respondent as affirmed by the first respondent.

13. As pointed out by the learned counsel appearing for the respondents, no case has been been made out. The findings recorded by the authorities are based upon materials and it is neither perverse nor in excess of jurisdiction nor liable to be interfered with. The power of judicial review under Article 226 cannot be equated to that of appellate power. The entire attempt on the part of the learned counsel appearing for the petitioner was to persuade this Court to re-examine the material evidence and findings recorded by the two authorities and the learned counsel persuaded this Court to interfere with the findings, as if this Court is an appellate authority.

Factual findings, in the present case, is not liable to be interfered with, as they are well considered findings supported by materials, besides the conclusions are also balanced.

14. Judicial review is permissible, if the impugned action is against law or is in violation of the prescribed procedures or is unreasonable, or mala fide or it is violative of the statutory provisions of the Act. The learned counsel appearing for the petitioner is unable to point out either illegality or error of jurisdiction or violation of procedure and therefore, this Court will not be justified in interfering with the proceedings of the first respondent. The proceedings impugned in this writ petition are not liable to be interfered with and this Court will not reappreciate the matter as a Court of appeal. This Court, while sitting under Article 226 of The Constitution of India, could examine or enquire whether the findings of the first respondent is based on any evidence and if it is based on no evidence, if such a finding suffers from error of law apparent on the face of the record and only in such a case, there could be an interference. In Ahmedabad Municipal Corpn. v. Virendra Kumar Jayantibhai Patel, (1997 (6) SCC 650), the Apex Court held thus:-

"High Courts under Article 226 of The Constitution are entitled to issue directions, writs and orders for correcting the record of the inferior Courts or the tribunal. It is true that the High Court while exercising its jurisdiction under Article 226, cannot convert itself into a Court of appeal and assess the sufficiency or adequacy of the evidence in support of the finding of fact reached by the competent Courts or the tribunals, but this does not debar the High Court from its power to enquire whether there is any evidence in support of a finding recorded by the inferior Court or tribunal. There is a difference between a finding based on sufficiency or adequacy of evidence and a finding based on no evidence. If the finding of fact recorded by the tribunal is based on no evidence, such a finding would suffer from error of law apparent on the face of record."

In Dadu v. State of Maharashtra (2000 (8) SCC 437) the Apex Court held thus:

"It cannot be denied that judicial review in our country is the heart and soul of our constitutional scheme. The judiciary is constituted the ultimate interpreter of the Constitution and is assigned the delicate task of determining the extent and scope of the powers conferred on each branch of the Government, ensuring that action of any branch does not transgress its limits. A Constitution Bench of this Court in S.P.Sampath Kumar v. Union of India held that: (SCC p.129, para 3)

"It is also a basic principle of the rule of law which permeates every provision of the Constitution and which forms its very core and essence that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but also be in accordance with law and it is the judiciary which has to ensure that the law is observed and there is compliance with the requirements of law on the part of the executive and other authorities. This function is discharged by the judiciary by exercise of the power of judicial review which is a most potent weapon in the hands of the judiciary for maintenance of the rule of law. The power of judicial review is an integral part of our constitutional system and without it, there will be no Government of laws and the rule of law would become a teasing illusion and a promise of unreality".

15. This court is of the considered view, as rightly pointed out by Mr. V.Vibhishanan, learned counsel for the respondents that no case has been made out for interference under Article 226. The proceedings of the first respondent, in confirming the proceedings of the second respondent, are based on factual findings based upon material evidence and there is neither any illegality nor there is an error of jurisdiction warranting interference.

16. In these circumstances, this Court holds that no interference is called for with the proceedings impugned in this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, W. M.P.No.4264 of 2000 is also dismissed.

Internet : Yes
Index:Yes
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To
1. The Presiding Officer,
Employees' Provident Fund

Appellate Tribunal, 7th Floor,
60, Skylark Building,
Nehru Place, New Delhi-110 019.

2. The Regional Provident Fund
Commissioner, Office of the
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